

AFFINITY CREDIT UNION, et al.,  
Plaintiffs,  
v.  
APPLE INC., et al.,  
Defendants.

Case No. [4:22-cv-04174-JSW](#) (KAW)

**ORDER REGARDING 9/12/25 JOINT  
DISCOVERY LETTER RE AFFINITY'S  
TRANSACTION DATA**

[Discovery Letter #3]

Re: Dkt. No. 226

On September 12, 2025, the parties filed a joint discovery letter regarding whether Affinity Credit Union is obligated to produce transaction data maintained by its transaction processor, Fidelity National Information Services, Inc. (f/k/a Vantiv, LLC) and Worldpay (“FIS”). (Joint Letter, Dkt. No. 226.)

The parties do not dispute that the transaction data is relevant. Rather, the issue is whether Affinity has possession, custody, or control under Federal Rule of Civil Procedure 34(a)(1). (Joint Letter at 1.) The parties have been meeting and conferring on this issue since March 2024. *Id.*

In sum, Apple contends that Affinity has control of the data and can obtain it on demand under the terms of Affinity's Master Services Agreement (“MSA”). (Joint Letter at 1.) Specifically, Apple cites to Section 10(f), which provides that “[c]ertain historical transaction records will be retained by Vendor [FIS] . . . and may be provided to Customer [Affinity] upon request at Vendor's then standard fees as applicable.” (Joint Letter at 1 (citing MSA, Joint Letter, Ex. D at AFFINITY-APPLEPAY-0021166).) The Court notes that this provision pertains to record-keeping for the purposes of compliance with federal, state, or local laws; it does not pertain to general record-keeping. (*See* MSA at AFFINITY-APPLEPAY-0021166.)

Apple cites to several cases in support of its position, including *Kilopass Tech. Inc. v.*

1        *Sidense Corp.*, No. C 10-02066 SI, 2011 WL 2470493, at \*3 (N.D. Cal. June 21, 2011), but they  
2        are inapposite. Specifically, reliance of *Kilopass* is misplaced, because that case sought to compel  
3        compliance with a third-party subpoena, which was granted on the condition that the plaintiff, as  
4        the party seeking discovery, pay the nonparty for the reasonable costs of production. *Id.* at \*3.

5              In opposition, Affinity argues that it does not have control of the transaction data, because  
6        it must pay for it. (Joint Letter at 3.) Previously, Affinity requested Apple Pay transaction data  
7        from FIS, and FIS produced 11 months of transaction data, which was produced to Apple. *Id.*  
8        Affinity was then told that if it wanted more historical data that it would have to pay for it, and the  
9        estimate was approximately \$7,000 to \$9,000. *Id.* at 3-4. As a result, Affinity contends that it does  
10        not have “control,” because it does not have the ability to obtain documents on demand. (Joint  
11        Letter at 4 (citing *United States v. Int'l Union of Petroleum & Indus. Workers, AFL-CIO*, 870 F.2d  
12        1450, 1452 (9th Cir. 1989).) The party seeking production has the burden of proving control. *Int'l*  
13        *Union of Petroleum & Indus. Workers*, 870 F.2d at 1452.

14              Here, the parties cite to no provision of the MSA which permits Affinity to obtain the  
15        transaction data sought on demand for the purposes of production to a private entity. *See id.*  
16        Indeed, as a practical matter, the fact that Affinity would have to pay for the transaction data belies  
17        the very notion of control, because not only does Affinity have to request the transaction data from  
18        FIS, but it will also have to pay for its production and there appears to be no guarantee that the  
19        terms of the MSA require FIS to furnish the information sought. Thus, the Court finds that Apple  
20        has failed to satisfy its burden of showing that Affinity has control over the Apple Pay transaction  
21        data in FIS’s possession within the meaning of Rule 34, and it DENIES Apple’s request to require  
22        Affinity to produce a complete set of transaction-level data in response to its requests for  
23        production.

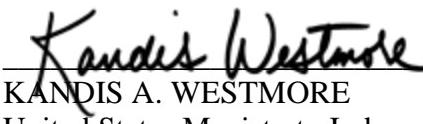
24              The Court notes that Affinity has no objection to Apple seeking this information from FIS  
25        directly. (Joint Letter at 4.) On September 2, 2025,<sup>1</sup> Apple subpoenaed the mobile wallet

26  
27        <sup>1</sup> It is surprising that it took 18 months of meeting and conferring before Apple served a subpoena  
28        on FIS. The Court notes that Affinity contends that the subpoena requests information far beyond  
what would have been produced for the estimated \$7,000 to \$9,000. (See Joint Letter at 4 n. 5.)

1 transaction data from FIS. *Id.* The Court trusts that Affinity will cooperate with Apple's attempts  
2 to obtain the information from FIS by way of subpoena. Should any disputes arise in connection  
3 with the subpoena, the parties are ordered to meet and confer in accordance with the Court's  
4 standing order. In the event they are unable to resolve any disputes without court intervention,  
5 they shall file a compliant joint letter in accordance with the standing order.

6 IT IS SO ORDERED.

7 Dated: October 9, 2025

  
8 KANDIS A. WESTMORE  
9 United States Magistrate Judge

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
United States District Court  
Northern District of California